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October 24, 2018

**BY U.S. Mail**

Michele Lumbert  
Clerk, Kennebec Superior Court  
1 Court Street  
Suite 101  
Augusta, ME 04330

Re: ***Mills v. Maine Department of Administrative & Financial Services,***  
**No. AP-18-63**

Dear Ms. Lumbert:

Enclosed please find a copy of the Respondent's Response to the Rule 80C Petition filed in the above-captioned matter.

Best,

/s/Patrick Strawbridge  
Patrick Strawbridge

STATE OF MAINE  
KENNEBEC, ss.

SUPERIOR COURT  
DOCKET NO. AP-18-63

JANET T. MILLS, in her official capacity as  
Attorney General of the State of Maine,

Petitioner,

v.

THE MAINE DEPARTMENT OF  
ADMINISTRATIVE & FINANCIAL  
SERVICES,

Respondent.

**RESPONSE TO PETITION**

In this matter, the Attorney General seeks to compel payment by state agency clients for millions of dollars in unspecified legal services. Most Mainers would not pay bills that they cannot comprehend for charges that they cannot verify. For years, the Governor and his Administration have requested that the Office of the Attorney General update its billing practices. The request is simple: provide standardized bills that demonstrate the time spent by an attorney on a given matter and the charge associated with it. The Attorney General asserts that the Administration's request for transparency would "serve no useful purpose." Pet. ¶7. The Administration disagrees.

DAFS is not required to respond to this petition, *see* M.R. Civ. P. 80C(a); however, it has decided to do so voluntarily in the hope that this response will help the Court understand the true nature of this dispute.\*

1. The Attorney General is the State's lawyer. She provides legal services to state agencies and bills those agencies for her services. *See* 5 M.R.S. §§ 191, 203.

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\* This response is both voluntary and preliminary. It does not raise every legal argument available to DAFS, or dispute every fact in the Attorney General's petition. DAFS reserves the right to make additional factual and legal arguments as this case progresses. *See* M.R. Civ. P. 8(d), 12(c), 80C.

2. In the legal field, the industry standard is to charge an hourly rate. The attorney then tracks her billable hours and charges the client her rate multiplied by her time. The attorneys bill explains her hourly rate, what tasks she performed, and how much time she spent on each task. These bills ensure transparency and accountability.

3. The invoices that state agencies receive from the Attorney General's Office do not provide detail regarding billing activities or time devoted to those activities. There is no reference to specific services rendered. Without this information, clients have no idea what they are paying for or whether the charges are reasonable.

4. Detailed bills are not just the industry standard; they are *required* by the rules governing attorney ethics in Maine and across the country. Attorneys have an ethical duty to explain what fees and other charges the client is actually being billed. A client cannot determine whether a fee is reasonable without detailed billing. Courts in Maine reject lump sum bills with no detail about work or time charged. In this matter, the client has repeatedly asked for additional information to understand legal bills and the attorney refuses to provide it.

5. The Attorney General could easily adopt normal billing practices. Other state attorneys general submit detailed bills to the agencies they represent. Maine's Attorney General submits detailed bills on occasion. For example, when working on the Maine Coastal Program, the Attorney General provides invoices that show the total amount charged, hourly rate, date, client, attorney name, hours billed in 15-minute increments, and a brief description of the work performed. However, the Attorney General abandons this practice when submitting bills to other state agencies.

6. The Administration cannot accept this lack of transparency from the Attorney General's Office. The Governor has asked the Attorney General to change her opaque billing

practices repeatedly and has proffered numerous ways to achieve transparency. *See* Exhibits A-D (Letters to AG's Office). The Attorney General has not fulfilled that straightforward request. In response, she instead offered that "confidential" attorney timesheets could be viewed temporarily in an offsite reading room, with no ability to remove them or make copies.

7. In private practice, a client could fire an attorney for refusing to provide clear, transparent bills. But the Governor cannot fire the Attorney General. In fact, the Attorney General has argued that the Governor cannot even hire *outside counsel* without her permission. *See Opinion of the Justices*, 112 A.3d 926, 929 (Me. 2015). So, to address the Attorney General's indecipherable bills, the Executive Branch took the only step available: withholding payments to her office.

8. On October 1, the Attorney General filed the current 80C petition against DAFS. The petition challenges two supposed agency actions under the APA. First, it alleges that Commissioner Porteous's August 30 letter was a "final agency action." Pet. 2 ¶ 9. Second, it alleges that DAFS' refusal to pay the Attorney General was a "failure or refusal to act." Pet. 2 ¶ 10. The petition contends that these actions somehow violated the statutes authorizing the Attorney General to represent and bill state agencies. *See* Pet. 3 ¶ 12 (citing 5 M.R.S. §§191(3), 203(2)). And the petition asserts that DAFS withheld payments not because of a legitimate disagreement over the Attorney General's billing practices, but for no reason at all. *See* Pet. ¶ 7.

9. The Attorney General's petition is meritless. It is a political dispute masquerading as an APA claim; it asks this Court to insert itself into a conflict between two constitutional officers in violation of the separation of powers; and it overreads the relevant statutes. DAFS will highlight just four of the petition's many flaws.

10. **First**, the petition does not challenge “final agency action,” as required by the APA. *See* 5 M.R.S. § 11001. The Attorney General does not challenge a rule, adjudication, or denial of a license. She challenges DAFS’ refusal to transfer funds under the budgetary laws. But DAFS’ “implementation of the budgetary laws generally applicable to the operation of State Government” is not the kind of agency action that courts can review under the APA. *Me. Citizens for Clean Elections v. LePage*, 2018 WL 5046128, at \*7 (Me. Super. Aug. 02, 2018). The APA is not “a commission to roam at large reviewing any and all final actions of the executive branch.” *New England Outdoor Ctr. v. Comm’r*, 748 A.2d 1009, 1013 (Me. 2000).

11. **Second**, the petition is untimely. The Attorney General was notified in May that she would not be paid until her billing practices changed. If this were a final agency action, the APA would give her 30 days to challenge that decision. *See* 5 M.R.S. § 11002(3). But the Attorney General did not file her petition until October 1—at least 3 months too late. The Attorney General cannot argue that she is challenging the Commissioner’s letter from August 30. That letter was not *itself* a refusal to pay, but simply *discussed* the refusal to pay that happened in May. Nor can the Attorney General argue that she is challenging a “failure or refusal to act,” which would give her six months to file instead of 30 days. *See* 5 M.R.S. § 11002(3). DAFS has not failed or refused to act; it *acted* in May by refusing to pay the Attorney General. *See Lingley v. Maine Workers’ Comp. Bd.*, 819 A.2d 327, 331 (Me. 2002) (“[A] refusal to take a requested action is not identical to a refusal to act.”). The Attorney General should have filed her petition in July, instead of waiting until the election was one month away.

12. **Third**, the petition seeks unconstitutional relief. The Attorney General asks this Court to “direct [DAFS] to take all necessary steps to facilitate payment of past and future amounts owed.” Pet. 3. But this remedy would violate the separation of powers. When the Governor sued

the Attorney General in 2017 for refusing to pay his outside counsel, the Attorney General successfully argued that the separation of powers prevents courts from “essentially ... appropriating funds from the Office of the Attorney General and redistributing them to the Executive Branch.” *LePage v. Mills*, 2017 WL 6513582, at \*6 (Me. Super. Oct. 16, 2017). But if this Court cannot transfer funds from the Attorney General to the Executive, then it cannot transfer funds from the Executive to the Attorney General either. “Surely the Judicial Branch may not, consistent with the separation of powers, compel such a transfer of appropriated funds.” AG’s Mot. to Dismiss at 19, in *LePage v. Mills*, No. CV-17-95; *see also Washington County v Fitzpatrick*, 2018 WL 2291088, at \*5 (Me. Super. Mar. 14, 2018) (refusing to “issue any order regarding ... payment of personnel” because such “policy choices are more appropriately committed to elected Executive and Legislative political leadership”).

13. *Fourth*, the petition does not allege a violation of the APA. The Attorney General wrongly assumes that Maine law gives her a right to choose whatever billing practices she pleases. At most, Maine law allows the Attorney General to determine *what rate* she will charge state agencies. *See* 5 M.R.S. § 203(2) (“[W]hen the Attorney General provides legal services to any board or state agency that is financed in whole or in part by dedicated or federal revenues, the Attorney General may bill the board or agency at a *reasonable rate determined by the Attorney General*.” (emphasis added)). But the fact that the Attorney General can choose the rate does not mean that she is subject to no rules at all, or that she can decline to specify a rate in advance. She could not, for example, bill an agency for legal services provided to a different agency, legal services that were never provided at all, or legal services that were used to oppose the agency’s position. Yet, without transparent bills, there is no way for the client to know whether the Attorney General is following these rules. The Attorney General cites no law limiting the Governor’s or

DAFS' authority to withhold payments until her bills satisfy minimal standards of transparency and accountability.

\* \* \* \*

For these reasons and more, the Attorney General's petition is doomed to failure. DAFS looks forward to developing these arguments further after the Attorney General submits her opening brief.

Respectfully submitted,

Patrick Strawbridge MKM  
Patrick Strawbridge, No. 10024  
CONSOVOY MCCARTHY PARK PLLC  
Ten Post Office Square  
8<sup>th</sup> Floor PMB #706  
Boston, MA 02109  
617.227.0548  
patrick@consovoymccarthy.com

Dated: October 24, 2018

# EXHIBIT A





STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

December 6, 2017

The Honorable Janet Mills  
Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Dear Attorney General Mills:

I am writing to you to express my concerns regarding your Office's practices in billing state agencies for legal services rendered. I am seeking increased transparency and clarity regarding charges for services.

I understand that, in certain instances, your Office has made efforts to provide greater transparency in its billing practices. The memos I have seen from your Office, however, do not provide clear billing details. I am very concerned that agencies do not receive an orderly summary of charges, but rather receive lengthy lists—in dense paragraph form—of activities undertaken by attorneys in your office. These memos are very difficult to decipher and needlessly consume hours of staff time.

Instead, I request that state agencies receive clear and transparent invoices based on time increments. These invoices would simply reflect the activities your staff attorneys performed on behalf of a given state agency and the time devoted to each activity. This would remove any confusion regarding the nature of services performed, the time it took an attorney to perform them and the resulting charge.

My request is straightforward and should not be controversial, as time-increment billing is standard practice in the legal industry. In order to responsibly serve Maine taxpayers and state agencies, I believe it is of the utmost importance that your Office provides full transparency in billing for legal services rendered to its client, namely the State of Maine.

Thank you for your consideration of my request.

Sincerely,

Paul R. LePage  
Governor



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FAX: (207) 287-1034

# EXHIBIT B



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

May 4, 2018

The Honorable Janet Mills  
Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Dear Attorney General Mills:

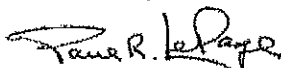
Over the last several years, you and I have corresponded on multiple occasions regarding my concern around your Office's practices in billing state agencies for legal services rendered. Most recently, I sent you a letter on December 6, 2017, seeking increased transparency and clarity regarding charges for services (and no, this missive was not slipped under your door on a Friday afternoon after 5 p.m.). To date, I have not received a response to this request from your office.

Today, as I have done in the past, I am again requesting that all state agencies receive clear and transparent invoices based on time increments. These invoices would simply reflect the activities your staff attorneys performed on behalf of a given state agency and the time devoted to each activity. This would remove any confusion regarding the nature of services performed, the time it took an attorney to perform them, and the resulting charge. After all, we are the client and request more transparent billing.

I cannot responsibly serve Maine taxpayers and state agencies without clear, transparent billing. I oversee billions of dollars in government spending, and it is imperative that I know what I am buying. The request noted above should not be controversial and is standard operating procedure for most in the legal profession. I believe it is of the utmost importance that your Office provides full transparency in billing for legal services rendered; until invoices contain that transparency, payment for all charges to state agencies will be held.

If you would like to further understand my concerns or need guidance on what is acceptable and appropriate billing detail, I would be happy to work with you personally or to connect you with some of our State's superb financial expertise.

Sincerely,

  
Paul R. LePage  
Governor

Cc: Senate President Mike Thibodeau  
Speaker of the House Sara Gideon



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# EXHIBIT C



STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
BURTON M. CROSS BUILDING, 3<sup>RD</sup> FLOOR  
78 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0078

SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

PAUL R. LEPAGE  
GOVERNOR

ALEXANDER E. PORTEOUS  
COMMISSIONER

August 30, 2018

**Via E-mail and Hand Delivery**

Jonathan R. Bolton  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006

Dear Attorney Bolton:

I have received your letter of August 24 regarding Office of the Attorney General (OAG) invoices for certain state agencies.

In recent years, Governor LePage and members of the LePage Administration have requested that the OAG update its billing practices. The Governor has long been concerned that OAG bills are opaque and difficult for state agency officials to review. Most Mainers would not pay bills that they cannot comprehend for charges that they cannot verify. The Governor takes the same position and has simply requested greater detail and transparency in invoices.

The OAG has not fulfilled that straightforward request. Therefore, earlier this year, the Governor directed the Department of Administrative and Financial Services (DAFS) to withhold payment for OAG invoices until billing is improved. As noted in your letter, state law requires executive agencies to rely on the Attorney General for legal services. Unlike the private sector, where clients are able to select—and change—their attorneys at will, the Administration cannot do that without express permission from the Attorney General to secure outside counsel. Since the Administration cannot change counsel based on differences over service delivery, such as invoicing practices, there is little recourse to effect change but to withhold payment for services.

OAG bills would be considerably improved by including attorney time and charges. The Governor has requested that your Office implement standard legal billing practices, whereby OAG invoices would identify services rendered for each tenth-of-an-hour period. If the OAG cannot accommodate tenth-of-an-hour billing increments, then the Governor has indicated that a broader time increment—such as quarter-hour—would be acceptable.

That Governor LePage directed DAFS to withhold payments to your Office should not have come as a surprise. In the Governor's May 4 letter to Attorney General Mills, he stated the following:

*I cannot responsibly serve Maine taxpayers and state agencies without clear, transparent billing. I oversee billions of dollars in government spending, and it is imperative that I know what I am buying. The request noted above should not be controversial and is standard operating procedure for most in the legal profession. I believe it is of the utmost importance that your Office provides full transparency in billing for legal services rendered; until invoices contain that transparency, payment for all charges to state agencies will be held.*

I have attached a copy of that letter for your review. It is further important to note that this is not a new request from the Governor. He has made it throughout his Administration. For example, in a December 6, 2017 letter to the Attorney General, the Governor made the same request for clear, transparent billing. He wrote the following regarding the kind of bills he would like state agencies to receive:

*These invoices would simply reflect the activities your staff attorneys performed on behalf of a given state agency and the time devoted to each activity. This would remove any confusion regarding the nature of services performed, the time it took an attorney to perform them and the resulting charge.*

This letter, which is also attached for your review, did not receive a response. Five months later, with no feedback from the OAG and no improvement to bills, the Governor sent his May 4 letter, making clear that his Administration would withhold payment until invoicing met his requested standards.

So that there is no confusion about Governor LePage's standards, he is seeking a standardized billing template that demonstrates the time spent by an attorney on a given matter and the charge associated with it. Invoices of that nature would provide for seamless review by client agencies, which could compare their expectations of work completed on an agency's behalf with the time and charges for a given billing period. OAG and client agencies could then have informed discussions regarding any confusion or dispute over services rendered.

The invoices that state agencies receive from your Office do not provide detail regarding billing activities or time devoted to those activities. Rather the columns denoting "No. of units", "Unit of Measure", and "Unit Price" are each blank—with only the "Charges / Credit" column populated—and there is no reference to specific services rendered.

While agencies receive memoranda that accompany their invoices, these narratives only discuss broadly the duties of OAG attorneys rather than the specific tasks completed and the amount of time each task required. Although this detail is better than none at all, the memoranda are difficult to review for accuracy and agreement. They are not "clear, detailed and transparent" as your letter suggests. A simple listing of attorneys, services rendered and time spent accordingly would be a more straightforward approach; it would meet the standard your letter describes; and it would fulfill the Governor's request.

DAFS would be pleased to work with the OAG to structure an invoice template agreeable to all parties. Noting and sharing your concern for appropriate use of Maine taxpayer dollars, DAFS personnel could partner with OAG staff members to structure a billing model that adequately funds your Office while reasonably charging client agencies. The LePage Administration sees no reason why we cannot find common ground and work together to develop a solution that advances good governance in our state. This should not be a political matter. It is regrettable to see it play out in the media and would be even more so to see it enter the courts at additional cost to Maine taxpayers.

We recognize that time-increment billing represents a new approach to invoicing agencies. It is, however, the legal industry standard. Further, in a modern era when technological innovations allow for heightened transparency in business dealings across the private and public sectors, the LePage Administration believes it is a good time to make this meaningful change. We are willing to work in good faith to advance this important reform and hope to partner with your Office to achieve an outcome that benefits all parties.

Thank you for your consideration.

Sincerely,



Alexander E. Porteous  
Commissioner

Attachments

cc: Governor Paul R. LePage  
Cabinet Members  
Senator Michael Thibodeau, President of the Senate  
Representative Sara Gideon, Speaker of the House  
Senator Garrett Mason, Senate Majority Leader  
Senator Troy Jackson, Senate Minority Leader  
Representative Erin Herbig, House Majority Leader  
Representative Kenneth Fredette, House Minority Leader  
Senator James Hamper, Chair, Appropriations and Financial Affairs Committee  
Representative Drew Gattine, Chair, Appropriations and Financial Affairs Committee  
Senator Lisa Keim, Chair, Judiciary Committee  
Representative Matthew Moonen, Chair, Judiciary Committee  
Dimitri Michaud, Deputy Commissioner of Finance, DAFS  
David Whitt, Deputy Commissioner of Operations, DAFS  
Doug Cotnoir, State Controller  
Melissa Gott, State Budget Officer  
Scott Ferguson, Director, Corrections Service Center  
Sarah Gove, Director, DHHS Service Center  
Janre Mullins, Director, General Government Service Center  
Gilbert Bilodeau, Director, Natural Resources Service Center  
Katharine Wiltuck, Director, Security and Employment Service Center



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Paul R. LePage  
GOVERNOR

May 4, 2018

The Honorable Janet Mills  
Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Dear Attorney General Mills:

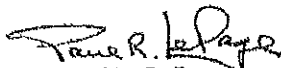
Over the last several years, you and I have corresponded on multiple occasions regarding my concern around your Office's practices in billing state agencies for legal services rendered. Most recently, I sent you a letter on December 6, 2017, seeking increased transparency and clarity regarding charges for services (and no, this missive was not slipped under your door on a Friday afternoon after 5 p.m.). To date, I have not received a response to this request from your office.

Today, as I have done in the past, I am again requesting that all state agencies receive clear and transparent invoices based on time increments. These invoices would simply reflect the activities your staff attorneys performed on behalf of a given state agency and the time devoted to each activity. This would remove any confusion regarding the nature of services performed, the time it took an attorney to perform them, and the resulting charge. After all, we are the client and request more transparent billing.

I cannot responsibly serve Maine taxpayers and state agencies without clear, transparent billing. I oversee billions of dollars in government spending, and it is imperative that I know what I am buying. The request noted above should not be controversial and is standard operating procedure for most in the legal profession. I believe it is of the utmost importance that your Office provides full transparency in billing for legal services rendered; until invoices contain that transparency, payment for all charges to state agencies will be held.

If you would like to further understand my concerns or need guidance on what is acceptable and appropriate billing detail, I would be happy to work with you personally or to connect you with some of our State's superb financial expertise.

Sincerely,

  
Paul R. LePage  
Governor

Cc: Senate President Mike Thibodeau  
Speaker of the House Sara Gideon



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Paul R. LePage  
GOVERNOR

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

December 6, 2017

The Honorable Janet Mills  
Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Dear Attorney General Mills:

I am writing to you to express my concerns regarding your Office's practices in billing state agencies for legal services rendered. I am seeking increased transparency and clarity regarding charges for services.

I understand that, in certain instances, your Office has made efforts to provide greater transparency in its billing practices. The memos I have seen from your Office, however, do not provide clear billing details. I am very concerned that agencies do not receive an orderly summary of charges, but rather receive lengthy lists—in dense paragraph form—of activities undertaken by attorneys in your office. These memos are very difficult to decipher and needlessly consume hours of staff time.

Instead, I request that state agencies receive clear and transparent invoices based on time increments. These invoices would simply reflect the activities your staff attorneys performed on behalf of a given state agency and the time devoted to each activity. This would remove any confusion regarding the nature of services performed, the time it took an attorney to perform them and the resulting charge.

My request is straightforward and should not be controversial, as time-increment billing is standard practice in the legal industry. In order to responsibly serve Maine taxpayers and state agencies, I believe it is of the utmost importance that your Office provides full transparency in billing for legal services rendered to its client, namely the State of Maine.

Thank you for your consideration of my request.

Sincerely,

Paul R. LePage  
Governor



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# EXHIBIT D



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PAUL R. LePAGE  
GOVERNOR

ALEXANDER E. PORTEOUS  
COMMISSIONER

September 24, 2018

**Via E-mail and Hand Delivery**

Susan P. Herman  
Deputy Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006

Dear Deputy Attorney General Herman:

I have received your letter of September 18 in follow up to our meeting of September 14. Thank you for providing a sample of the timesheet that Office of the Attorney General (OAG) attorneys maintain.

As I noted during our meeting, that OAG attorneys maintain timesheets internal to your Office is a step in the right direction toward fulfilling the LePage Administration's request for time-increment billing. The timesheets provide a good foundation for the OAG to bill state agencies on a time-increment basis. However, the timesheets alone—provided temporarily at an offsite location—would not meet Governor LePage's request.

To advance transparency and good governance, Governor LePage has requested that agencies receive standardized invoices from the OAG rather than an opportunity to review timecards remotely. Along those lines, in a response to Assistant Attorney General Jonathan Bolton's August 24 letter, I wrote the following regarding the Governor's request:

*So that there is no confusion about Governor LePage's standards, he is seeking a standardized billing template that demonstrates the time spent by an attorney on a given matter and the charge associated with it. Invoices of that nature would provide for seamless review by client agencies, which could compare their expectations of work completed on an agency's behalf with the time and charges for a given billing period. OAG and client agencies could then have informed discussions regarding any confusion or dispute over services rendered.*

Please find attached a copy of my August 30 letter to Attorney Bolton.

In an effort to advance the dialogue between the OAG and the LePage Administration, please find attached, as well, a draft legal bill that could serve as an OAG invoice template. A basic, straightforward invoice, such as this sample, would meet Governor LePage's request. Another alternative to an electronic reading room would be for the OAG to model a standardized invoice on those that your office currently provides for the Maine Coastal Program. For that program, a summary invoice shows the attorney name, hours billed to the quarter-hour, the attorney's hourly rate and total amount charged. More detailed backup identifies the date, attorney name, client, hours billed (to the quarter-hour) for each activity and a brief description of that activity. While the Administration would prefer a more detailed description of billed activity—and a clearer cover invoice—Maine Coastal Program billing could otherwise serve as a template for OAG invoices across state agencies.

The Administration continues to believe that, working together with your office, we can find common ground on this matter. As I stated in my August 30 letter to Attorney Bolton, "DAFS personnel could partner with OAG staff members to structure a billing model that adequately funds your Office while reasonably charging client agencies." Further, the quarter-hour breakdown of attorney work—and hourly rate structure—that your Office currently provides for the Maine Coastal Program provides a basis for extending quarter-hour time-keeping across all state agencies and structuring standardized invoices. Since Governor LePage has stated that he would accept quarter-hour billing, it seems reasonable that we could agree to an invoicing compromise acceptable to both parties.

You cited in your letter the important work that OAG attorneys perform on behalf of our state and their diligence in executing those duties. The Administration agrees with your characterization. Requesting detailed, transparent invoices is a separate matter and is not reflective of an opinion regarding OAG attorney efforts or performance. Rather, it is a means of verifying that OAG-client agency partnerships operate on shared priorities agreed to by your Office and the Administration.

As I said in my letter of August 30, it would be regrettable to see this matter enter the courts at additional cost to taxpayers. Governor LePage has demonstrated his willingness to compromise, but the offer of an electronic reading room to review timecards kept on an hourly basis does not meet him half-way. Standardized, quarter-hour invoices would. We remain willing to work in good faith to partner with your Office to achieve an outcome that benefits all parties and permits DAFS to make invoice payments in full.

Thank you for your consideration.

Sincerely,



Alexander E. Porteous  
Commissioner

Attachments

cc: Governor Paul R. LePage



STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
BURTON M. CROSS BUILDING, 3<sup>RD</sup> FLOOR  
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SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

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GOVERNOR

ALEXANDER E. PORTEOUS  
COMMISSIONER

August 30, 2018

**Via E-mail and Hand Delivery**

Jonathan R. Bolton  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006

Dear Attorney Bolton:

I have received your letter of August 24 regarding Office of the Attorney General (OAG) invoices for certain state agencies.

In recent years, Governor LePage and members of the LePage Administration have requested that the OAG update its billing practices. The Governor has long been concerned that OAG bills are opaque and difficult for state agency officials to review. Most Mainers would not pay bills that they cannot comprehend for charges that they cannot verify. The Governor takes the same position and has simply requested greater detail and transparency in invoices.

The OAG has not fulfilled that straightforward request. Therefore, earlier this year, the Governor directed the Department of Administrative and Financial Services (DAFS) to withhold payment for OAG invoices until billing is improved. As noted in your letter, state law requires executive agencies to rely on the Attorney General for legal services. Unlike the private sector, where clients are able to select—and change—their attorneys at will, the Administration cannot do that without express permission from the Attorney General to secure outside counsel. Since the Administration cannot change counsel based on differences over service delivery, such as invoicing practices, there is little recourse to effect change but to withhold payment for services.

OAG bills would be considerably improved by including attorney time and charges. The Governor has requested that your Office implement standard legal billing practices, whereby OAG invoices would identify services rendered for each tenth-of-an-hour period. If the OAG cannot accommodate tenth-of-an-hour billing increments, then the Governor has indicated that a broader time increment—such as quarter-hour—would be acceptable.

That Governor LePage directed DAFS to withhold payments to your Office should not have come as a surprise. In the Governor's May 4 letter to Attorney General Mills, he stated the following:

*I cannot responsibly serve Maine taxpayers and state agencies without clear, transparent billing. I oversee billions of dollars in government spending, and it is imperative that I know what I am buying. The request noted above should not be controversial and is standard operating procedure for most in the legal profession. I believe it is of the utmost importance that your Office provides full transparency in billing for legal services rendered; until invoices contain that transparency, payment for all charges to state agencies will be held.*

I have attached a copy of that letter for your review. It is further important to note that this is not a new request from the Governor. He has made it throughout his Administration. For example, in a December 6, 2017 letter to the Attorney General, the Governor made the same request for clear, transparent billing. He wrote the following regarding the kind of bills he would like state agencies to receive:

*These invoices would simply reflect the activities your staff attorneys performed on behalf of a given state agency and the time devoted to each activity. This would remove any confusion regarding the nature of services performed, the time it took an attorney to perform them and the resulting charge.*

This letter, which is also attached for your review, did not receive a response. Five months later, with no feedback from the OAG and no improvement to bills, the Governor sent his May 4 letter, making clear that his Administration would withhold payment until invoicing met his requested standards.

So that there is no confusion about Governor LePage's standards, he is seeking a standardized billing template that demonstrates the time spent by an attorney on a given matter and the charge associated with it. Invoices of that nature would provide for seamless review by client agencies, which could compare their expectations of work completed on an agency's behalf with the time and charges for a given billing period. OAG and client agencies could then have informed discussions regarding any confusion or dispute over services rendered.

The invoices that state agencies receive from your Office do not provide detail regarding billing activities or time devoted to those activities. Rather the columns denoting "No. of units", "Unit of Measure", and "Unit Price" are each blank—with only the "Charges / Credit" column populated—and there is no reference to specific services rendered.

While agencies receive memoranda that accompany their invoices, these narratives only discuss broadly the duties of OAG attorneys rather than the specific tasks completed and the amount of time each task required. Although this detail is better than none at all, the memoranda are difficult to review for accuracy and agreement. They are not "clear, detailed and transparent" as your letter suggests. A simple listing of attorneys, services rendered and time spent accordingly would be a more straightforward approach; it would meet the standard your letter describes; and it would fulfill the Governor's request.

DAFS would be pleased to work with the OAG to structure an invoice template agreeable to all parties. Noting and sharing your concern for appropriate use of Maine taxpayer dollars, DAFS personnel could partner with OAG staff members to structure a billing model that adequately funds your Office while reasonably charging client agencies. The LePage Administration sees no reason why we cannot find common ground and work together to develop a solution that advances good governance in our state. This should not be a political matter. It is regrettable to see it play out in the media and would be even more so to see it enter the courts at additional cost to Maine taxpayers.

We recognize that time-increment billing represents a new approach to invoicing agencies. It is, however, the legal industry standard. Further, in a modern era when technological innovations allow for heightened transparency in business dealings across the private and public sectors, the LePage Administration believes it is a good time to make this meaningful change. We are willing to work in good faith to advance this important reform and hope to partner with your Office to achieve an outcome that benefits all parties.

Thank you for your consideration.

Sincerely,



Alexander E. Porteous  
Commissioner

Attachments

cc: Governor Paul R. LePage  
Cabinet Members  
Senator Michael Thibodeau, President of the Senate  
Representative Sara Gideon, Speaker of the House  
Senator Garrett Mason, Senate Majority Leader  
Senator Troy Jackson, Senate Minority Leader  
Representative Erin Herbig, House Majority Leader  
Representative Kenneth Fredette, House Minority Leader  
Senator James Hamper, Chair, Appropriations and Financial Affairs Committee  
Representative Drew Gattine, Chair, Appropriations and Financial Affairs Committee  
Senator Lisa Keim, Chair, Judiciary Committee  
Representative Matthew Moonen, Chair, Judiciary Committee  
Dimitri Michaud, Deputy Commissioner of Finance, DAFS  
David Whitt, Deputy Commissioner of Operations, DAFS  
Doug Colnoir, State Controller  
Melissa Gott, State Budget Officer  
Scott Ferguson, Director, Corrections Service Center  
Sarah Gove, Director, DHHS Service Center  
Janre Mullins, Director, General Government Service Center  
Gilbert Bilodeau, Director, Natural Resources Service Center  
Katharine Wiltuck, Director, Security and Employment Service Center

## Office of the Attorney General – Invoice

6 State House Station  
Augusta, ME 04333  
207-626-8800

Bill To:

Invoice Date:  
Invoice Amount:  
Invoice Number:  
CC:

Client:

Matter:

### Attorney's Fees

Attorney Name:

Date	Details	Rate	Hours	Fees
Subtotal:				

### Attorney's Fees

Attorney Name:

Date	Details	Rate	Hours	Fees
Subtotal:				

### Costs

Date	Details	Fees
Subtotal:		